[Cite as *Hosterman v. French*, 2014-Ohio-5855.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

KATHERINE L. HOSTERMAN,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	CASE NO. 13 CO 25
V.	)	
	)	OPINION
PAUL W. FRENCH, et al.,	)	
	)	
DEFENDANTS-APPELLANTS.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Columbiana County, Ohio Case No. 2001CV206
JUDGMENT:	Affirmed
APPEARANCES:	
For Plaintiff-Appellee	Attorney John W. Burnworth 4775 Munson St. NW P.O. Box 36963 Canton, Ohio 44735-6963
For Defendants-Appellants	Attorney John C. Pfau P.O. Box 9070 Youngstown, Ohio 44513

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: December 30, 2014

[Cite as *Hosterman v. French*, 2014-Ohio-5855.]
DONOFRIO, J.

{¶1} Defendants-appellants, Paul French and Moultrie Construction, LLC, appeal from a Columbiana County Common Pleas Court judgment in favor of plaintiff-appellee, Katherine Hosterman, on appellee's claims for breach of contract and unjust enrichment, following a jury trial.

{¶2} Hosterman and French were in a relationship and began living together in 2006. They lived in a house that Hosterman owned. Hosterman's parents financed Hosterman's purchase of the home and Hosterman owed her parents on the mortgage.

{¶3} French is the sole owner of Moultrie Construction. In 2008, the IRS contacted French regarding back taxes owed by either him personally or Moultrie Construction. Hosterman took out a line of credit on her house in the amount of $45,000, and loaned French approximately $31,000 to pay the taxes. Hosterman subsequently took several more draws from the line of credit, each time loaning the money to either French or Moultrie Construction to pay taxes and payroll. French agreed to make payments to pay off the line of credit. The debt totaled approximately $48,000.

{¶4} In February 2007, Hosterman gave birth to the parties' daughter. Hosterman and French continued to live as a family with their daughter until December 2009. French moved out at that time. When French moved out, he and Hosterman agreed that French would continue to make payments to pay off the line of credit and Hosterman would not seek child support from him.

{¶5} French continued to make payments on the line of credit until May 2010, and Hosterman did not pursue child support. Some disagreement or misunderstanding arose between the parties in late May 2010, concerning French's desire to have a shared parenting plan put into writing. French did not make a payment on the line of credit in June. Two months after French's last payment on the line of credit, on July 14, 2010, Hosterman filed an action for child support. A child support order was put on several months later in the amount of $380 month.

{¶6} Hosterman then filed a complaint against appellants on March 9, 2011,

asserting claims for breach of contract and unjust enrichment. French filed a counterclaim asserting claims for breach of contract, promissory estoppel, conversion, unjust enrichment, and damage to personal property.

{¶7} The parties filed competing motions for summary judgment, which the trial court overruled. Therefore, the matter proceeded to a jury trial.

{¶8} The jury returned verdicts in favor of Hosterman against both French and Moultrie Construction in the amount of $31,367.25. The jury also returned a verdict in favor of Hosterman on French's counterclaims. Counsel agreed there should be one verdict against French and Moultrie Construction, jointly and severally, and the court entered judgment accordingly in the amount of $31,367.25.

{¶9} Appellants filed a timely notice of appeal on June 3, 2013. The trial court stayed the execution of the judgment pending this appeal.

{¶10} Appellants raise six assignments of error, the first of which states:

> THE TRIAL COURT ERRED IN RULING THAT THE STATUTE OF FRAUDS DOES NOT BAR APPELLANTS' BREACH OF CONTRACT CLAIM.

{¶11} In overruling the parties' summary judgment motions, the trial court found, as a matter of law, that the Statute of Frauds did not bar Hosterman's breach of contract claim. Her breach of contract claim alleged that she lent the money from the line of credit to appellants and French failed to make payments to pay off the line of credit as he had agreed. This agreement between the parties was not in writing.

{¶12} R.C. 1335.05 contains the Statute of Frauds and provides an agreement that is not to be performed within one year must be in writing:

> No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default, or miscarriage of another person; nor to charge an executor or administrator upon a special promise to answer damages out of his own estate; nor to

> charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, *or upon an agreement that is not to be performed within one year from the making thereof*; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.

(Emphasis added.)

{¶13} Appellants argue the trial court erred in determining that the Statute of Frauds did not bar Hosterman's breach of contract claim. They deny that French entered into a contract, as alleged by Hosterman, to repay her line of credit. And they argue that even construing the evidence in the light most favorable to Hosterman, the agreement was only to make monthly payments of $800 to $1,000, not to repay the line of credit within one year. They contend that it would take more than one year to pay off the line of credit. Appellants contend Hosterman's alleged verbal agreement does not comply with the Statute of Frauds and, therefore, the agreement is unenforceable.

{¶14} In ruling on the summary judgment motions, the trial court found there was no definitive evidence demonstrating that the alleged oral contract between the parties could not be completed within one year. It noted there was no evidence that the terms prevented French from paying off the line of credit within one year. And the trial court pointed out that the fact that the contract was not actually completed within one year was of no consequence because the Statute of Frauds is only concerned with whether completion of the contract within one year is a possibility.

{¶15} The Ohio Supreme Court has held:

> An alleged oral agreement to pay money in installments is "an agreement that is not to be performed within one year" pursuant to R.C.

> 1335.05 when the installment payment obligation exceeds one year. However, where the time of payment under the agreement is indefinite or dependent upon a contingency which may happen within one year, the agreement does not fall within the "not to be performed within one year" provision of R.C. 1335.05.

Sherman v. Haines, 73 Ohio St.3d 125, 652 N.E.2d 698 (1995), syllabus. In *Sherman*, the alleged oral agreement provided that the appellant would pay off a $3,000 debt in monthly installments of $25.00. Thus, the Court found that the agreement's express terms necessarily required 120 months of installment payments. *Id*. at 129. The Court noted the agreement's terms were neither indefinite nor based on a contingency and the agreement did not provide for the possibility of an early payoff. *Id*.

{¶16} In this case, the alleged contract was capable of performance within one year. There were no express terms governing repayment or the amount of the monthly payments as was the case in *Sherman*. In her affidavit, Hosterman stated that she opened a line of credit secured by a lien on her home. (Hosterman Aff. ¶6). Through the line of credit, Hosterman loaned French $48,967.25. (Hosterman Aff. ¶7). Hosterman loaned French this money with the expectation that he would repay the money in monthly installments. (Hosterman Aff. ¶8). From December 2008 through May 2010, French made installment payments totaling $16,400. (Hosterman Aff. ¶9).

{¶17} The Statute of Frauds does not apply when there is no evidence presented indicating the contract had terms relating to time for performance and it was possible to complete the contract within one year. *Kime Design, L.L.C. v. Aouthmany*, 6th Dist. No. L-11-1162, 2012-Ohio-3183, ¶25. A promise that is not likely to be performed within a year, and that in fact is not performed within a year, is still not within the Statute of Frauds if at the time the agreement is entered into, there is a possibility in law and in fact that full performance may be completed within a year. *Ford v. Tandy Transp., Inc*., 86 Ohio App.3d 364, 382, 620 N.E.2d 996 (1993).

{¶18} While it may have been unlikely that French would pay off the line of credit within one year, the Statute of Frauds is only concerned with whether it was *possible* to complete the terms of the agreement within one year, not with whether completion was likely. And in this case, where there were no express payment terms, other than to repay the line of credit in monthly installments, repayment within a year was a possibility, although a remote possibility. Thus, the trial court correctly ruled that the Statute of Frauds did not bar Hosterman's breach of contract claim.

{¶19} Moreover even if the Statute of Frauds applied to Hosterman's breach of contract claim, it has no applicability to her equitable claim for unjust enrichment. Therefore, the Statute of Frauds does not defeat the jury's verdict that French must repay Hosterman for the loan she made to him.

{¶20} An oral contract that cannot be performed within a year of its making is unenforceable under the Statute of Frauds; but where one party fully performs and the other party, to his unjust enrichment, receives and refuses to pay over money which, under the unenforceable contract, he agreed to pay to the party who has fully performed, a quasi-contract arises, upon which the performing party may maintain an action against the defaulting party for money owed. *Hummel v. Hummel*, 133 Ohio St. 520, 14 N.E.2d 923 (1938), paragraph one of the syllabus. "This principle has been applied in suits brought by a party plaintiff who has fully performed a contract, unenforceable because it cannot be performed within a year, to recover for benefits received and unjustly withheld by the other party." *Id*. at 528.

{¶21} Based on the above law, even if Hosterman's breach of contract claim was barred by the Statute of Frauds she could still recover under her unjust enrichment claim contrary to appellants' assertion.

{¶22} Accordingly, appellants' first assignment of error is without merit.

{¶23} Appellants' second assignment of error states:

> THE TRIAL COURT ERRED IN FAILING TO CHARGE THE JURY ON THE STATUTE OF FRAUDS.

{¶24} Appellants requested that the trial court instruct the jury on the Statute of Frauds but the trial court refused. (Tr. 293, 490). Appellants' requested instruction stated:

> Defendant's (sic.) claim that Plaintiff's alleged contract does not comply with the statute of frauds. If you find that Plaintiff's alleged contract involves an agreement that is not to be performed within one year from the making thereof, unless the agreement is in writing and signed by the party to be charged therewith, the agreement violates the statute of frauds and its unenforceable.

{¶25} Appellants argue that their proposed instruction presented a correct statement of the law and was applicable to the facts of this case. Therefore, appellants contend the trial court abused its discretion in failing to give the above-quoted instruction.

{¶26} The decision to give a jury instruction is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *B & B Contrs*. *& Developers, Inc. v. Olsavsky Jaminet Architects, Inc*., 7th Dist. No. 12 MA 5, 2012-Ohio-5981, ¶101. Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140 (1983). A jury instruction must conform to both the law and the evidence presented at trial. *State v. Stokes*, 7th Dist. No. 08-MA-39, 2009-Ohio-4820, ¶57.

{¶27} The evidence on this subject was as follows.

{¶28} Hosterman testified that when she learned of French's tax problems, she offered to take out a line of credit to help pay the taxes. (Tr. 164). She stated that there was an expectation of repayment, but "there was no set schedule for him to, you know, repay the payment. But he did make monthly payments." (Tr. 164). Hosterman stated that French made several payments on the line of credit. (Tr. 174). Counsel then posed the question: "Is there any payment schedule specifically for the

repayment?" (Tr. 174). Hosterman responded, "There is no set payment schedule ever made, no." (Tr. 174-175). Hosterman testified that French usually made monthly payments between $800 and $1,200. (Tr. 176). On cross examination, defense counsel asked Hosterman: "And it was your understanding that the duration and time to pay off any loan was going to take a lot longer than a year, wasn't it?" (Tr. 202). Hosterman responded, "there was no set schedule or no set time frame." (Tr. 202).

{¶29} French testified it was a mutual agreement for Hosterman to take out the line of credit to pay the taxes. (Tr. 248-249). He also testified there was no specific schedule for repaying the line of credit. (Tr. 261). He stated that he made various payments both greater and less than $1,000. (Tr. 261).

{¶30} Given the evidence at trial, the trial court did not abuse its discretion in deciding not to give the Statute of Frauds instruction. The evidence was uncontroverted that the parties entered into a mutual agreement to take out the line of credit and that French would repay it. Importantly, both parties agreed that there was no set payment schedule to repay the line of credit. Thus, both parties' testimony removes the agreement to repay the line of credit from the Statute of Frauds because without a specific repayment schedule or deadline the possibility existed that the agreement could be completed in one year. And while that did not happen, as stated above, the Statute of Frauds is only concerned with whether it was a *possibility* that the agreement could be completed in one year. Thus, the trial court acted within its discretion regarding the Statute of Frauds instruction.

{¶31} Accordingly, appellants' second assignment of error is without merit.

{¶32} Appellants' third assignment of error states:

> THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GIVE APPELLANTS' REQUESTED BREACH OF CONTRACT DEFENSE JURY INSTRUCTION.

{¶33} Appellants argue here the trial court abused its discretion when it failed

to give their requested breach of contract defense instruction:

> In regards to Plaintiff's claim for breach of contract against Defendants, Defendants have presented the defense that Plaintiff has breached a contract between the parties though Defendants deny that any earlier contract existed. If you find that one did exist, Defendants assert that Defendant Paul W. French entered into an oral agreement with Plaintiff that she would waive all child support payments in return for Defendant Paul W. French agreeing to pay the remainder of the line of credit. Defendants assert that the parties agreed to this contract and upon reliance of the contract, Defendant began making payments on the line of credit. This contract superceded [sic.] any prior contract.
>
> Before you can find for the Defendants on this issue, you must find by the greater weight of the evidence that (A) the parties entered into this contract, and (B) the Plaintiff breached or broke the contract by failing to honor her agreement to waive any child support, and (C) the Defendant had begun performance of the contract at the time of Plaintiff's breach.
>
> A contract is breached or broken when one party fails or refuses to perform her duties under the contract.
>
> * * *
>
> If you find by the greater weight of the evidence that Defendant proved his defense of breach of contract then you must enter your verdict for Defendant.

(Defendants' Supplemental Jury Instructions Number 1).

{¶34} Appellants also requested that the court submit two interrogatories:

> Do you find by a preponderance of the evidence that Plaintiff Katherine Hosterman and Defendant Paul W. French entered into a contract

> whereby it was agreed that Plaintiff would waive child support payments in consideration for Defendant French paying the balance on Plaintiff's line of credit loan?
>
> Do you find by a preponderance of the evidence that Plaintiff breached this contract by failing to follow through with waiving the child support?

(Defendants' Proposed Jury Interrogatories and General Verdict Forms Numbers 1 and 2).

{¶35} Appellants argue that both Hosterman's and French's testimony supported this instruction and these interrogatories.

{¶36} Hosterman points out that the trial court did instruct the jury on appellants' defense, it just chose to give a different instruction than the one appellants proposed.

{¶37} The trial court instructed the jury:

> In addition, the Defendants have raised a number of affirmative defenses. The Defendants assert as an affirmative defense to the complaint that Defendant, Paul W. French, and the Plaintiff entered into a contract whereby the Plaintiff agreed to waive child support payments in consideration for Defendant French agreeing to pay the balance of the line of credit.
>
> The Defendants claim that this constitutes an accord and satisfaction, and therefore, they are not responsible to pay the amount claimed by the Plaintiff in her complaint.
>
> If you find by the greater weight of the evidence that the parties entered into accord and satisfaction, you will find for the Defendants.
>
> An accord occurs when there is a contract between two parties in which one party agrees to accept a substitute performance other than that which is due under a contract, and a satisfaction of the

performance required under the contract.

Satisfaction takes place when the substituted performance is accepted.

To find an accord and satisfaction, you must find by the greater weight of the evidence that the parties agreed to a contract of accord in which the Plaintiff agreed to accept a performance from Defendants to pay the balance of a line of credit in return for her waiving child support payments.

(Tr. 600-602).

{¶38} The court also presented the jury with an interrogatory asking: "Do you find that Defendant French proved by a preponderance of the evidence any of the affirmative defenses he raised to the complaint, namely accord and satisfaction, payment, waiver, or frustration of purpose?" (Interrogatory No. 3). The jury answered this interrogatory in the negative.

{¶39} The court's accord and satisfaction instruction was similar to appellants' requested instruction. It required the jury to find that the parties entered into a subsequent agreement whereby Hosterman agreed to accept French's payment on the balance of the line of credit in exchange for her waiving child support. The jury found the evidence did not support this conclusion. Without a finding that the parties entered into the above stated accord and satisfaction, the jury would not be able to find that Hosterman breached this new agreement between the parties. Because the trial court gave the jury a comparable instruction to the one appellants requested and from which the jury could reach the same conclusion, we cannot conclude that the court erred in failing to give the requested instruction verbatim.

{¶40} Accordingly, appellants' third assignment of error is without merit.

{¶41} Appellants' fourth assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO GIVE APPELLANTS' SECOND REQUESTED JURY

INSTRUCTION ON ACCORD AND SATISFACTION.

{¶42} Appellants requested two separate instructions on accord and satisfaction. The court gave a similar instruction to appellants' first requested instruction, which is the accord and satisfaction instruction quoted above and which dealt with waiving child support. In this assignment of error, appellants contend the trial court erred in refusing to give the following instruction on accord and satisfaction, which instead dealt with French's payment of Hosterman's bills:

> The Defendant claims that there has been an accord and satisfaction and therefore he is not responsible for the amount claimed by Plaintiff. If you find by the greater weight of the evidence that the parties entered into an accord and satisfaction, you will find for the Defendant.
>
> An "accord" occurs when there is a contract between two parties in which one party agrees to accept a substitute performance other than that which is due under a contract in satisfaction of the performance required under the contract. "Satisfaction" takes place when the substitute performance is accepted.
>
> To find an accord and satisfaction, you must find by the greater weight of the evidence that parties agreed to a contract of accord in which Plaintiff agreed to accept a performance from Defendant to pay her other bills and obligations the parties jointly held.

(Defendants' Supplemental Jury Instructions Number 6).

{¶43} Appellants argue that the instruction given by the trial court on accord and satisfaction was limited to one set of facts (waiving child support) and, therefore, the jury was led to believe that accord and satisfaction only applied to the scenario set out by the given instruction.

{¶44} As stated above, whether to give a jury instruction is within the sound

discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Olsavsky Jaminet Architects, Inc*., 2012-Ohio-5981, at ¶101. On review, we must consider jury instructions in their entirety. *Sech v. Rogers*, 6 Ohio St.3d 462, 464, 453 N.E.2d 705 (1983).

{¶45} In addition to the accord and satisfaction instruction the court gave the jury as set out in appellants' third assignment of error, the trial court also instructed the jury:

> The Defendants assert as an affirmative defense to the complaint that the Plaintiff has no right to recover because Defendant French has paid the Plaintiff monies while they were together that were used to the Plaintiff's benefit, and were equal to or in excess of the balance owed on the Plaintiff's line of credit.
>
> If you find by the greater weight of the evidence that the Defendants have established the affirmative defense of payment, you will find for the Defendants.

(Tr. 602).

{¶46} In viewing the given jury instructions as a whole, the trial court's affirmative defense of payment instruction served the same purpose as appellants' second requested accord and satisfaction instruction. If the jury found that French paid monies to Hosterman, which she used to her benefit and which exceeded that amount owed on the line of credit, then it would have found in French's favor on this affirmative defense. Therefore, considering the jury instructions as a whole, we cannot conclude that the trial court erred in failing to give appellants' second requested accord and satisfaction instruction.

{¶47} Accordingly, appellants' fourth assignment of error is without merit.

{¶48} Appellants' fifth assignment of error states:

> THE JURY VERDICT IS AGAINST THE MANIFEST WEIGHT

OF THE EVIDENCE.

{¶49} Here appellants contend the jury's verdict in favor of Hosterman was against the manifest weight of the evidence. They assert the evidence was uncontroverted that when French and Hosterman broke up in December 2009, they agreed that French would make monthly payments on the line of credit and Hosterman would waive any right to collect child support. Appellants argue this agreement superseded any previous agreements between the parties. They go on to assert the jury was misled by the jury instructions because they found that French and Moultrie Construction each owed Hosterman $31,367.25, which appellants state was the full amount of all of the damages due.

{¶50} Judgments supported by some competent, credible evidence going to all the material elements of the case must not be reversed, as being against the manifest weight of the evidence. *C .E. Morris Co. v. Foley Constr. Co*., 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. See, also, *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226, 638 N.E.2d 533 (1994). Reviewing courts must oblige every reasonable presumption in favor of the lower court's judgment and finding of facts. *Gerijo*, 70 Ohio St.3d at 226 (citing *Seasons Coal v. Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 [1984]). In the event the evidence is susceptible to more than one interpretation, we must construe it consistently with the lower court's judgment. *Id*. In addition, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *Kalain v. Smith*, 25 Ohio St.3d 157, 162, 495 N.E.2d 572 (1986). "A finding of an error of law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *Seasons Coal*, 10 Ohio St.3d at 81.

{¶51} Appellants only take issue with the jury's verdict in favor of Hosterman on her breach of contract claim. They do not assert that the jury's verdict in favor of Hosterman on French's counterclaims was against the weight of the evidence. The relevant evidence regarding the parties' agreement was as follows.

{¶52} Hosterman testified that she took out the line of credit on her home so

that French could pay his taxes. (Tr. 164). She stated she did so with an expectation that he would repay her in monthly payments. (Tr. 164, 174). The total amount withdrawn on the line of credit was $48,967.25. (Tr. 165-174). French made numerous payments towards the line of credit. (Tr. 174). He started making payments the month after Hosterman loaned him the money. (Tr. 175). Hosterman stated that French also contributed money toward their shared household expenses. (Tr. 180-181).

{¶53} Hosterman further testified that in December 2009, she and French broke up and he moved out of her house. (Tr. 186). She stated they agreed that he would continue to pay off the line of credit and she would not seek child support. (Tr. 186, 207). In April or May 2010, Hosterman stated, French wanted a shared parenting agreement. (Tr. 186). She stated she emailed him some papers but never signed them. (Tr. 186). French stopped making payments on the line of credit in May 2010. (Tr. 187).

{¶54} Hosterman stated that after French failed to make a payment on the line of credit in June, she pursued child support. (Tr. 208, 210, 231). She eventually got a child support order for $380 per month. (Tr. 208).

{¶55} French testified that he and Hosterman mutually agreed that she would take out the line of credit to pay appellants' taxes. (Tr. 248-249). He stated it was "just as much in return for me paying her house * * * [and] taking care of her bills and debts." (Tr. 359-360). French stated there was no specific schedule for repaying the line of credit. (Tr. 261). French also testified that during the parties' relationship, they had an agreement that they would pay off all of their debts and sell Hosterman's house and buy another house. (Tr. 355). He gave Hosterman money during the relationship to pay off debts and to pay for household expenses. (Tr. 355, 389-390).

{¶56} French stated that when the parties broke up, they agreed that he would pay the balance on the line of credit and she would waive child support and give him a "fair share" of their daughter's time. (Tr. 366). After that agreement, French stated he made four more payments on the line of credit. (Tr. 366). He also

began asking Hosterman for papers regarding shared parenting. (Tr. 366-368). He stated that she never signed any papers. (Tr. 367-368). And several months later she sought a child support order. (Tr. 369). French testified he stopped making payments on the line of credit because he believed Hosterman did not honor her part of the agreement. (Tr. 370).

{¶57} French agreed that Hosterman initiated child support proceedings on July 14, 2010. (Tr. 407-408). And he agreed that this was over two months after his last payment on the line of credit. (Tr. 408).

{¶58} Given the timeline of events, it was reasonable for the jury to conclude that Hosterman pursued child support only after she had not received a payment on the line of credit for over two months. It was also reasonable to conclude that French was the one who breached the agreement by not making a payment on the line of credit for more than two months. Because the jury's verdict is supported by some competent, credible evidence, we cannot reverse it. *C.E. Morris Co*., 54 Ohio St.2d at the syllabus.

{¶59} Accordingly, appellants' fifth assignment of error is without merit.

{¶60} Appellants' sixth and final assignment of error states:

> THE JURY INTERROGATORIES WERE CONFUSING AND MISLEADING.

{¶61} Appellants do not make any specific arguments here. They simply state that the jury interrogatories were confusing and misleading in that "they were complex, [and] had overlapping of claims in many of the interrogatories."

{¶62} Appellants fail to make any specific argument here. They do not set out what exactly was "confusing" or "misleading" about the interrogatories nor do they suggest how the jury was confused. Without a more particular argument, we must conclude that no problem existed with the interrogatories.

{¶63} Accordingly, appellants' sixth assignment of error is without merit.

{¶64} For the reasons stated above, the trial court's judgment is hereby

affirmed.

Vukovich, J., concurs.

DeGenaro, P.J., concurs.